

STATE OF MICHIGAN
COURT OF APPEALS

KEITH CONNER,

Plaintiff-Appellee,

v

JANETTE CONNER,

Defendant-Appellant.

UNPUBLISHED
December 5, 2013

No. 314436
St. Clair Circuit Court
LC No. 03-001048-DM

Before: M. J. KELLY, P.J., and CAVANAGH and SHAPIRO, JJ.

PER CURIAM.

In this child custody dispute, defendant Janette Conner appeals of right the trial court's opinion and order granting to plaintiff Keith Conner full custody over their two minor children: PC and KC. Because we conclude that there were no errors warranting relief, we affirm.

I. BASIC FACTS

Keith and Janette Conner were married and had PC in 1998 and KC in 2000. In 2003, Keith Conner sued his wife for divorce. The trial court entered a consent judgment of divorce in May 2004. The court awarded joint legal and physical custody to both parents and provided that Keith Conner should have reasonable parenting time.

In February 2012, Keith Conner filed an emergency motion for temporary custody. He alleged that Janette Conner had been leaving the children in the care of a babysitter for years and, after a recent incident, he learned that the babysitter had begun to care for the children for increasingly long periods of time. Indeed, he maintained that the babysitter had, in effect, become the children's primary caregiver. After the incident, however, the babysitter refused to provide further care for the children and PC had become responsible for caring for herself and her sibling. Keith Conner argued that his former wife's failure to fulfill her role as primary caregiver had adversely affected her relationship with the children and the children's performance at school. He argued that Janette Conner's inability to provide parenting constituted a change in circumstances that warranted revisiting the original custody order.

The trial court referred the matter to the Friend of the Court for evaluation and recommendations. In June 2012, the case worker issued a report recommending that the trial court revise the custody arrangement. The case worker stated that the trial court should continue to order that both parties have joint legal and physical custody of the children, but should also

provide Keith Conner with significantly expanded parenting time. Specifically, the case worker recommended that the children should have their primary residence with Keith Conner for school purposes.

The trial court held a hearing on Keith Conner's motion over two days in October and November 2012.

Keith Conner testified that he and his former wife split their parenting equally after the divorce; she had them one week and he had them the next. This lasted until she decided to move more than 80 miles to be with her boyfriend, Randy Reinholdt, about six months after the divorce. Keith Conner stated that he had poor communication with his former wife; they did not "agree on anything" and it's always "her way or no way." He nevertheless tried to continue exercising his parenting time as effectively as he could under the circumstances.

Bobbi Jo Harpster testified that she met Janette Conner through Reinholdt, who went to high school with Harpster and Harpster's husband. Harpster saw the children when they were around Reinholdt and said "they were afraid of Randy." She agreed that Janette did not take steps to protect the children when Reinholdt would mistreat the children or be rough with them; instead, she "stayed quiet." At one point, Janette Conner called her at one in the morning; she was "upset" and "crying." Janette told her that Reinholdt was drunk and threatening to kill her. Harpster said she let Janette and her children stay with her family for a couple of weeks after the incident.

Keith Conner learned from his daughter that Reinholdt was abusive. PC called him and said that they were staying in a women's shelter in 2007 or 2008. He said he was upset and spoke to several agencies about taking legal action. He also refused to return the children to Janette's care after their next visit until she agreed to leave Reinholdt; she agreed and he verified that she had obtained her own apartment.

Harpster stated that she started to watch over PC and KC at a time when "the kids were jumping from house to house." At the time, Janette Conner did not have anyone to watch the kids. Janette had finally left Reinholdt, after returning to live with him for a while, but continued to have problems finding a home. Janette took her kids to live with a friend, April, who also had three children of her own.

Keith Conner testified that his daughter told him that she was frequently left watching her brother and April's three children; at the time, PC was nine years of age. PC would even have to make "sure they all got fed" while her mom slept and April was gone. This problem persisted for a year after which Janette Conner found her own apartment.

Harpster said that she started watching PC and KC for Janette in November 2008 after she got her own apartment. She watched Janette's kids 12 out of every 14 days and 90% of those times were overnight. In a typical day, PC and KC would arrive before 9 p.m. and would stay the night. She stated that "nine times out of ten" the children were at her house by 5 or 6 p.m. and would eat "dinner with us." In addition, Harpster would sometimes pick the children up from Janette Conner's apartment after school and the children would also frequently come over for dinner and then stay the night. Harpster said that Janette would often not come home right

after her shift, which caused PC to be late for school “most everyday for a whole year” Janette would also drop the kids off for a short time on her days off and then not return for a couple of hours. During the summer, Janette would come to pick the children up even later than she did during the school year.

Janette Conner testified that she worked as a “direct care worker” taking care of “developmentally disabled people” in their group homes. She worked all shifts, but mostly worked from 11 p.m. to 7 a.m. She agreed that Harpster’s testimony about her living arrangements over the past four years was “mostly” accurate. As for her sitting arrangements, Janette stated that she would sometimes take the children to Harpster’s home for dinner, but would otherwise try to have them there by 9 p.m. She admitted that her schedule made it difficult to get PC to school on time and, accordingly, after the first year, she arranged for Harpster’s husband to take PC to school. Janette stated that she made \$8.37 per hour and could not live on the income provided with 40 hours per week even with child support. For that reason, she had to work more than five days per week.

Harpster testified that on several occasions the children’s schools called her because they could not contact Janette. She also had to pick up PC from a school dance because Janette did not come to pick her up and the school was closing. She cared for PC while she recovered from knee surgery. From observing Janette with the children, she came to believe that “Janette came first, the kids came second.” She also felt that KC was disrespectful and out of control when she first began to watch over him.

Keith Conner testified that he was concerned about the amount of time that his kids were spending with sitters, but Janette would not consider letting him spend more time with the children. Indeed, during one holiday, Janette refused to let the children spend extra time with him despite the fact that she had to work; rather than let the children stay with him for a few more days, she had the children spend the remainder of the holiday with a sitter. Keith testified that Janette’s living arrangements were adversely affecting the children; he stated that his son’s school work suffered during this time and both kids complained about the circumstances. PC told him that she felt that she lived “out of her bag” and that she had to pack everything that she needed for school to bring along to the sitters. When living with her mother, PC also feels like she has to be KC’s caregiver. Keith explained that PC seemed to be under a lot of stress and told him that she does not eat or sleep properly. When she visits him, however, she seems more relaxed and eats and sleeps well. Both children were also upset because they could not stay in their own bedrooms at night. Because of these problems, Keith stated that he began to consider whether he should ask the trial court to order a change in custody.

Alana Vizachero testified that she was KC’s fourth grade teacher and that she was familiar with KC’s academic record. She stated that KC had many missing assignments and was very disorganized. He also had behavioral problems—he had trouble with self-control and was physically aggressive. Vizachero stated that Janette Conner would listen to her concerns about KC, but would not “follow through” with any changes. However, when KC stayed with his father, she noticed that KC’s assignments got done. Vizachero also agreed that Keith Conner showed an appropriate level of concern for KC’s educational needs.

Anne LaPointe testified that she was KC's principal. She stated that Janette Conner "was not happy to hear" the information that the school personnel provided about KC. LaPointe said she had difficulty with Janette's "anger." LaPointe wrote a letter to document her concerns with KC's academic performance; she expressed her belief that the problem arose from a lack of parental participation at home: "My concerns were that [KC] was not getting his homework done, was not being attended to when he got home from school and he did not come back to school with any of his homework." She said that KC told her that his mom "wasn't home at night to help him with his homework."

LaPointe said that things changed when Keith Conner got involved. She was impressed by Keith's efforts to ensure that KC's homework got done. For that reason, she wrote in her letter that she thought KC "would be better off being with Mr. Conner." He would be better off, in her opinion, for both his "academics and his well-being." She explained that she had personally witnessed incidents where there seemed to be a lack of oversight with Janette Conner. By way of example, she described an incident involving KC at an after school event. Despite the fact that it was supposed to be a family event, he attended by himself. In addition, no one came to get him. So she stayed with him after everyone left and made some calls to arrange for him to be picked up. There were other incidents as well and she agreed that it was not unusual for Janette to be angry or belligerent when she contacted her about such problems.

Keith Conner testified that he finally decided to ask for a change in the custody arrangements after an incident in February 2012. PC called him at 1 a.m.; she was "panicked and upset." She was also crying and wanted him to "come and get her right away." She said that Harpster was fighting with her husband.

Harpster testified that she was watching Janette's children on the night of the incident. PC had earlier expressed concern about a second phone that appeared to be on her mother's bill. Harpster said that PC asked her to investigate the number because she suspected that her mother might be "hooking up" with Reinholdt again. From speaking with her husband she began to suspect that the new phone might be in her husband's possession. She searched the house and found a phone hidden in an unfinished shower. Harpster said she read the text messages and came to the conclusion that her husband had been having an affair with Janette Conner for several months. She felt betrayed and angry and began to fight with her husband, although it did not become physical. PC was crying and upset and Harpster tried to call Janette to come and get her children because it "was a bad situation." Janette could not, however, come get the children because no one would come in to cover her. PC did not want to go back to her mother's apartment so she called her dad. Keith Conner came and picked the children up around 3:30 a.m. Harpster said that she would not watch the children for Janette after the incident.

On cross-examination, Harpster admitted that she was Janette's friend and that she loved Janette's children: "I love them two children and I would do it again for them" She felt that she provided the children with a stable home and wants what's best for the children. Harpster admitted that she was still angry with Janette, but denied that her testimony was affected by her animosity: "A bad mom's a bad mom." She explained: "I am upset, but I'm not bitter. There's ways of getting back at people than to do this. This would be mean and cruel to the kids."

On redirect, Harpster agreed that Janette Conner was a lax parent and stated: “I was raising those children.” She further felt that she essentially stood in the place of their mother for those years.

The trial court issued its opinion and order in November 2012. On the basis of the testimony and evidence, the trial court determined that there had been a change in circumstances since the entry of the last custody order that warranted revisiting the children’s custody arrangements. Specifically, the trial court found that Janette Conner’s lack of involvement with her children’s everyday care was affecting their well-being. It also found that Janette Conner’s lack of involvement had eroded the custodial environment to the point where the children no longer looked to her for care and guidance. Accordingly, it determined that neither party had an established custodial environment with the children. The court then considered the children’s best interests and concluded that it was in their best interests to award sole physical custody to Keith Conner. It therefore ordered that Keith Conner should have sole physical custody and that both Keith and Janette Conner should have joint legal custody. It ordered the children to reside with Keith Conner during the school year and with Janette Conner during the summers. It also allocated time for visits and parenting during the holidays.

Janette Conner now appeals to this Court.

II. CUSTODY

A. STANDARD OF REVIEW

On appeal, Janette Conner argues that the trial court erred when it determined that there had been a change in circumstances that was sufficient to warrant revisiting the original custody order. She also argues that the trial court erred when it determined that neither party had an established custodial environment and erred when it analyzed the children’s best interests and awarded Keith Conner sole physical custody of the children and extended parenting time.

This Court must uphold the trial court’s findings in child custody cases unless the findings are against the great weight of the evidence. MCL 722.28. This standard is deferential to the trial court: a reviewing court may not substitute its judgment on questions of fact; rather, it must review the entire record to determine whether the findings clearly preponderate in the opposite direction. *Fletcher v Fletcher*, 447 Mich 871, 878 (BRICKLEY, J.), 900 (GRIFFIN, J.); 526 NW2d 871 (1994). This deferential standard of review applies to both the trial court’s ordinary evidentiary findings and its findings of ultimate fact. *Id.* at 879. This Court reviews a trial court’s discretionary rulings in a custody case for a “palpable abuse of discretion.” *Id.*, quoting MCL 722.28. A trial court abuses its discretion when its decision is “so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather passion or bias.” *Fletcher*, 447 Mich at 879-880, quoting *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959); see also *Shulick v Richards*, 273 Mich App 320, 323-325; 729 NW2d 533 (2006) (clarifying that the more deferential standard of review for an abuse of discretion stated in *Fletcher* continues to apply to child custody cases even though our Supreme Court has since disavowed the *Spalding* articulation as the default standard). Finally, this Court reviews the trial

court's interpretation and application of the law to the facts for clear legal error. *Fletcher*, 447 Mich at 881.

B. PROPER CAUSE OR CHANGED CIRCUMSTANCES

1. THE STANDARDS

The Legislature limited a trial court's ability to modify or amend its custody orders: it may only modify or amend "its previous judgments or orders for proper cause shown or because of change of circumstances." MCL 722.27(1)(c). The party seeking a change in custody bears the burden of proving by a preponderance of the evidence that there is proper cause or a change in circumstances sufficient to warrant revisiting the custody arrangements. *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003). This requirement serves as a "barrier against removal of a child from an established custodial environment and to minimize unwarranted and disruptive changes of custody orders." *Id.* at 509 (quotation marks and citation omitted).

Proper cause "means one or more appropriate grounds that have or could have a significant effect on the child's life to the extent that a reevaluation of the child's custodial situation should be undertaken." *Id.* at 509-510. In determining whether there is proper cause, trial courts should look to the best interest factors described under MCL 722.23. *Id.* at 511-512. But the moving party cannot establish proper grounds with "just *any* fact relevant to the twelve factors." *Id.* at 512. "Rather, the grounds presented must be 'legally sufficient,' i.e., they must be of a magnitude to have a significant effect on the child's well-being to the extent that revisiting the custody order would be proper." *Id.*

The movant may establish changed circumstances by showing that there has been a material change in the circumstances surrounding the child's custody since the entry of the last custody order, "which have or could have a significant effect on the child's well-being":

Again, not just any change will suffice, for over time there will always be some changes in a child's environment, behavior, and well-being. Instead, the evidence must demonstrate something more than the normal life changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child. This too will be a determination made on the basis of the facts of each case, with the relevance of the facts presented being gauged by the statutory best interest factors. [*Id.* at 513-514.]

2. THE TRIAL COURT'S FINDINGS

In determining whether there was a change in the circumstances surrounding the original custody order, the trial court first summarized the events that had occurred since it entered the original custody order. It found that Janette Conner had moved the children "80 miles" from their original residence in order to be with a man who was "abusive to the children" and to her and who the children feared. This move, it noted, substantially affected Keith Conner's ability to "see his children" and prevented him from "being able to provide any type of child care for them when [Janette Conner] worked." Although she eventually left her boyfriend and found a suitable

apartment, Janette began to work excessively: she worked mostly third shift, but would also “work double shifts” and “weekends.” She worked so many hours that she was forced to rely on Harpster to provide a stable home environment for her children. The court found that the children were supposed to be with Harpster for “about 60 hours per week but were actually at the home for a considerable amount of time in addition to the time [Janette] left them there while she worked.” Janette would also not return after her shift; she would instead “rely on the Harpsters to continue to care for them while she pursued other interests.” These circumstances also forced PC on occasion to assume the role of a caregiver to her younger brother. After factoring in the time that the children spent with their father and at school, the trial court found that Janette spent significantly less time parenting her own children than did other persons.

The trial court also recognized that—even when Janette was parenting the children—she was not placing their needs before her own. She was not engaged with KC and the school to help rectify his academic problems. It also noted the incidents that showed that Janette was not ensuring that the children had adequate supervision at school events. The trial court similarly found that Janette Conner placed her own desires before her children’s needs when she decided to have an affair with Harpster’s husband; because of this affair, the children lost the stability that Harpster provided them and PC is now “responsible to care for her younger brother” when her mom works.

From the totality of this evidence, the trial court found that Janette’s “involvement with her children or lack thereof is such that the well-being of the children is being affected.” This lack of involvement and the concomitant harm to the children, the trial court further found, constituted “both a sufficient change of circumstances and a proper cause” to revisit the original custody order.

On appeal, Janette contends that the trial court erred when it determined that there was a change in circumstances or proper cause to revisit custody because none of the events—the 80-mile move, the incidents of domestic violence, KC’s difficulties at school—summarized by the court constitute anything more than the ordinary life events. Moreover, to the extent that these events were relevant, she argues that the trial court should have given them only “minimal weight as they were not reflective of current circumstances.”

We agree that some of these events—considered in isolation—might be considered normal life events which would not warrant a review of custody. See *Vodvarka*, 259 Mich App at 513. We also agree that the prior events, at least with regard to the stability of her housing and her prior involvement with an abusive partner, did not reflect the circumstances surrounding the children’s custody at the time of the hearings. But we disagree that the trial court relied on any of these events individually or collectively as changes that warranted revisiting custody. Rather, a fair reading of the trial court’s opinion shows that the trial court discussed these facts as evidence that Janette repeatedly placed her own needs before those of her children and had increasingly abdicated her role as the children’s primary caregiver, but nevertheless refused to let Keith Conner—who shared joint physical and legal custody of the children—to assist her with the children’s care. That is, the trial court relied on this evidence to the extent that it showed that Janette was unable or unwilling to place her children’s emotional and personal needs before her own. It then found that this change in her parenting—her lack of involvement—had a significant and detrimental effect on the children’s well-being. And, although reasonable persons might

disagree as to this finding, there was evidence to support it. *Fletcher*, 447 Mich at 878 (stating that appellate courts may not substitute their judgment on questions of fact unless the evidence clearly preponderates in the opposite direction).

Janette Conner did not dispute the evidence that she had been working extra hours and days and that she had relied on Harpster to provide her children with proper care when the children were supposed to be in her care. Instead, she justified her child care decisions on the ground that she had to work the extra hours in order to make sufficient money to support her children. She also did not present any evidence concerning how she provided emotional, physical, academic and personal support to the children when actually with the children. Thus, it was essentially undisputed that the children had come to rely on themselves or third-parties for their ordinary care when not with their father. In fact there was evidence that the children regularly ate breakfast and dinner with Harpster. They also spent an inordinate number of nights outside their own home—so many that PC felt she was living out of a bag. When Harpster was unavailable to care for the children, PC would end up caring for herself and her brother. The evidence further showed that these child care issues persisted for years.

Janette Conner did testify that she placed her children's needs before her own: she paid for PC's trip to Washington, D.C. and paid for KC's extra-curricular activities. She further testified that she supported the decision to have KC repeat a grade and testified that the children were since then doing "very well." But her testimony was contradicted by evidence that she did not place her children's needs first.

There was evidence that she moved in order to separate the children from their father. In addition, KC's teacher and principal both offered testimony that Janette Conner was not receptive to their concerns and would become argumentative or belligerent with them. In contrast, Keith Conner was receptive and took efforts to ensure that his children were receiving academic support. LaPointe even offered her opinion that KC would be better off with his father because there appeared to be a lack of oversight with Janette. Similarly, Harpster testified that Janette had a tendency to place her own needs before her children's needs, including purchasing clothing for herself while refusing to purchase clothing for PC. There was also testimony that Janette purchased a cell phone and phone plan for Harpster's husband in order to facilitate their affair at a time when she claimed she had to work extra hours just to pay her ordinary expenses. Finally, the evidence that Janette Conner stayed in an abusive relationship and then had an affair with Harpster's husband—all to her children's detriment—also showed that Janette did not place her children's needs before her own desires.

Keith Conner presented evidence that—if believed—established that Janette Conner had since the last order been unwilling or unable to serve as the children's primary caregiver and that the children's well-being had been significantly affected as a result. The trial court had the opportunity to hear Keith Conner's witnesses and assess their credibility and found them credible. Because their testimony was essentially undisputed, we cannot conclude that the trial court's finding that there was a change in circumstance sufficient to warrant revisiting the custody order was against the great weight of the evidence. *Fletcher*, 447 Mich at 878. Accordingly, the trial court did not err when it proceeded to consider the children's best interest.

C. CUSTODIAL ENVIRONMENT

Janette Conner next challenges the trial court's finding that neither she nor her former husband had established a custodial environment with the children at the time of the hearing. The Legislature provided that a trial court shall not amend an old order or issue a new order that changes "the established custodial environment of a child" unless there is "clear and convincing evidence that it is in the best interest of the child." MCL 722.27(1)(c). The purpose of this heightened evidentiary standard is to "minimize the prospect of unwarranted and disruptive change of custody orders and to erect a barrier against removal of a child from an 'established custodial environment', except in the most compelling cases." *Baker v Baker*, 411 Mich 567, 577; 309 NW2d 532 (1981). However, if there is no established custodial environment or, if the proposed changes to the custody arrangements do not alter the established custodial environment, this heightened evidentiary burden does not apply; instead, the trial court need only determine whether a preponderance of the evidence shows that the proposed change would be in the child's best interest considering the factors provided under MCL 722.23. *Pierron v Pierron*, 486 Mich 81, 89-90; 782 NW2d 480 (2010) (stating that if a proposed change would not alter an established custodial environment, the clear and convincing evidence standard does not apply); *Baker*, 411 Mich at 579 (stating that where there is no established custodial environment the trial court should simply determine the child's best interests consistent with MCL 722.23). Accordingly, before proceeding to determine whether it was in PC and KC's best interest to alter the current custody situation, the trial court had to first find whether the children had an established custodial environment. *Pierron*, 486 Mich at 85.

A child has an established custodial environment "if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort." MCL 722.27(1)(c). The trial court should also consider the child's age, "the physical environment, and the inclination of the custodian and the child as to permanency of the relationship" *Id.* An established custodial environment depends "upon a custodial relationship of a significant duration" in which the child "was provided the parental care, discipline, love, guidance and attention appropriate to his [or her] age and individual needs; an environment in both the physical and psychological sense in which the relationship between the custodian and the child is marked by qualities of security, stability and permanence." *Baker*, 411 Mich at 579-580.

Here, the trial court found that, even though the children had contact with their father during arranged parenting time, the children did not have an established custodial environment with him. The trial court also found that whatever custodial relationship the children may have had with their mother had since deteriorated and no longer amounted to an "established custodial environment."

The court relied on the evidence that Janette Conner moved the children because she "wanted [Keith] to have less contact with the children" and then exposed them to an abusive relationship. After Janette decided to return to her abusive boyfriend, PC refused to return and instead stated that she would stay with Harpster. When Janette finally resolved to leave the abusive relationship, she nevertheless moved the children into a home with a friend who repeatedly left her own children and Janette's children unattended. As a result, while Janette slept, "9 year old [PC] would be left to care for her 6 year old brother." The trial court relied too

on the evidence that Janette Conner left her children with Harpster for an inordinate amount of time—12 days out of every 14 and for a significant portion of each of those days. The trial court also again reviewed the evidence that Janette Conner did not place her children’s needs before her own. In particular, it noted an incident where KC sent her a text asking her to attend a Boy Scout function and she tossed the phone onto the table and exclaimed that “she can’t deal with this bullshit.” The trial court explained that the evidence showed that the children did not have a healthy relationship with their mother founded on “mutual respect.”

On the basis of this evidence, the trial court found that “whatever established custodial environment may have existed between [Janette Conner] and the children has broken down to the extent that there is no longer an established custodial environment with [her].” Indeed, the trial court concluded that the children have relied on Harpster as much as their mother “for guidance, discipline, the necessities of life and comfort”

On appeal, Janette Conner argues that the trial court’s finding concerning the established custodial environment was against the great weight of the evidence because “it is undisputed that the minor children lived primarily with” her since the divorce. She also argues that the trial court improperly punished her for working long hours, which is contrary to this state’s public policy. We do not agree that the trial court failed to recognize that the children had been in Janette’s care for many years or that the trial court was unfairly punishing her for wanting to earn extra money to provide for her family.

The trial court recognized that the children primarily resided with Janette Conner and recognized that the children may have had an established custodial environment with her at one time. It nevertheless found that, by the time of the hearing, the children no longer looked to their mother for parental care, discipline, love, guidance and attention appropriate to their ages. *Baker*, 411 Mich at 579-580. And our Supreme Court has recognized that events in a child’s life can result in the destruction of an existing custodial environment. *Id.* at 580-582 (stating that the evidence showed that various disruptive events in the child’s life—including repeated geographical moves—“destroyed the previously established custodial environment” such that the trial court was warranted in finding that there was no established custodial environment by the time of trial). While the trial court discussed the evidence that Janette entrusted her children to others for long periods so that she could work, the trial court did not find that entrusting the children to another’s care alone destroyed an established custodial environment. Rather, the trial court relied on the evidence that Janette Conner increasingly let Harpster and others assume the role of parent to her children. It also relied on the evidence that the children did not respect their mother and would look to others, including Harpster, their father, and school personnel, to meet needs that should otherwise have been met by their mother. Moreover, much of this evidence was left un rebutted. Accordingly, while reasonable people might reach different conclusions after considering the testimony and evidence, we cannot conclude that the trial court’s finding that the children did not naturally look to either their father or their mother for “guidance, discipline, the necessities of life, and parental comfort,” MCL 722.27(1)(c), was against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

D. BEST INTERESTS

Janette Conner also argues that the trial court's findings on the best interest factors provided under MCL 722.23 were either inadequate or against the great weight of the evidence.

1. LOVE, AFFECTION, GUIDANCE

She first faults the trial court's findings concerning the parties' "capacity and disposition" to give the children "love, affection, and guidance" under MCL 722.23(b). Specifically, Janette contends that the trial court improperly placed her actions under "a microscope" and "overly criticiz[ed] any isolated incident that the court deemed inappropriate."

The trial court found that both Keith and Janette Conner had the "capacity" to give the children love, affection, and guidance. But it still found that this factor favored Keith because the children spend "most of their time away" from Janette and, even when she is with the children, Janette's actions "show[ed] lack of guidance." Although Janette characterized the testimony and evidence that tended to show a lack of proper guidance as involving isolated incidents, the testimony and evidence revealed several specific incidents that showed she was unable or unwilling to provide the children with proper care and guidance. Moreover, Harpster's testimony, when considered along with the testimony by KC's teacher and principal, permits an inference that the examples were indicative of a recurring pattern. Therefore, we cannot agree that the trial court's finding on this factor was against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

2. FOOD, CLOTHING, MEDICAL CARE, AND OTHER MATERIAL NEEDS

Janette Conner argues that the trial court also erred when it found that Keith Conner was favored when considering the parties' capacity to provide the children with "food, clothing, medical care . . . and other material needs." MCL 722.23(c). She contends that the trial court erred by considering her prior housing instability (which she maintains was not supported by the evidence) and her ex-husband's superior earning capacity.

As a preliminary matter, we do agree that the trial court improperly favored Keith Conner solely on the basis of his extra income. The trial court found that both Keith and Janette Conner "earn sufficient income" to meet the children's material needs. Nevertheless, it found that this factor "slightly favor[ed]" Keith Conner given the evidence that Janette had had housing instability and chose to work long hours to earn extra money. Because this factor included all aspects of the children's material needs, which includes shelter, the trial court could properly consider whether the parties' actually provided suitable housing when determining whether the parties had the "capacity and *disposition*" to meet the children's material needs. MCL 722.23(c) (emphasis added). The evidence showed that Janette moved the children repeatedly over a period of time and chose to house her children at one point in a home with no electricity. This prior history supports an inference that Janette may make poor housing decisions in the future, which in turn implicates her "disposition" to meet the children's material needs. Further, there was evidence that Janette elected to work long hours in order to have more income, but there was also evidence that she chose to spend that extra income on things for herself.

Given the totality of the evidence adduced at the hearing, we cannot conclude that the trial court's finding that this factor "slightly" favored Keith Conner was against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

3. CONTINUITY

Janette Conner next argues that the trial court failed to make a proper finding concerning the "length of time the child[ren] [have] lived in a stable, satisfactory environment, and the desirability of maintaining continuity." MCL 722.23(d). To the extent that the trial court's statement constituted an implicit finding in favor of Keith Conner, she contends that the trial court improperly punished her for working hard and having an affair.

In analyzing this factor, the trial court returned to the evidence that Janette Conner had repeatedly placed her own interests over those of her children. While it again noted that Janette had had an affair, it did so in the context that she took actions that tended to destabilize the children's environment. It similarly noted that Janette exposed the children to domestic abuse and even tried to force the children to return to that environment, which "even [PC] recognized . . . was not a good environment and refused to go." From this evidence, the trial court found that the children did not have "a stable environment" with Janette—rather, the "stability that they have had [was] with Ms. Harpster." Given the trial court's discussion of this factor, it is patently evident that it determined that this factor favored Keith Conner. Moreover, its findings were amply supported by the record. *Fletcher*, 447 Mich at 878.

4. PERMANENCE OF THE EXISTING AND PROPOSED CUSTODIAL HOMES

Janette Conner maintains that the trial court again failed to make a proper finding when it considered the "permanence, as a family unit, of the existing or proposed custodial home or homes." MCL 722.23(e). Specifically, she contends that the trial court improperly failed to state who this factor favored and, in any event, could not consider the "acceptability" of the home environment when considering this factor.

When considering this factor, the trial court discussed the evidence that Keith Conner had been in a long and stable relationship with his girlfriend with whom he lived. It also discussed the evidence that Janette Conner had made poor relationship choices and that those choices "had a detrimental effect on the children." Although the trial court did not explicitly state that this factor favored Keith Conner, it is evident that the trial court treated this factor as favoring him. Moreover, the case that Janette Conner cited for the proposition that the trial court could not consider the "acceptability" of the parties' living arrangements under this factor did not actually address this factor beyond stating that the parties in that case did not significantly dispute the trial court's findings on it. See *Harper v Harper*, 199 Mich App 409, 417; 502 NW2d 731 (1993). In addition, because this factor concerns the "permanence" as a "family unit" of the "existing" and "proposed custodial home or homes", MCL 722.23(e), we think the trial court could properly consider evidence that the existing or proposed homes would include significant others who may or may not contribute to maintaining the stability and permanence of the family unit.

The trial court's consideration of this factor was not erroneous or contrary to the great weight of the evidence. *Fletcher*, 447 Mich at 878, 881.

5. MORAL FITNESS

Janette Conner contends that the trial court committed a clear legal error when it considered her affair in determining the “moral fitness of the parties involved.” MCL 722.23(f). Our Supreme Court has stated that this factor concerns the effect that a parent's conduct may have on his or her relationship with the child and is not a matter of who is the morally superior parent. *Fletcher*, 447 Mich at 887. And, because extramarital affairs are not necessarily a reliable indicator of how one will function within the child-parent relationship, “extramarital conduct, in and of itself, may not be relevant to factor f.” *Id.*

Although the trial court discussed Janette Conner's affair under this factor, it did not find that she was morally unfit because she had an affair. Instead, it raised this issue in the context of its affect on her children's stability—namely, that she elected to have an affair despite the harmful effects that her decision might have on the children's care. It also noted that Janette lied about the affair until finally admitting to it at the hearing. Lastly, it considered that conduct along with the evidence that Janette re-engaged in an abusive relationship despite knowing that it was detrimental to her and her children. That is, the trial court considered the affair, her effort to conceal it, and her involvement in an abusive relationship as evidence that Janette's poor moral decisions have had an adverse effect on her ability to properly parent. Taken in that context and considering the totality of the evidence, the trial court did not improperly rely on Janette's affair in deciding that this factor favored Keith Conner. *Id.* at 887 (stating that evidence implicating morality may be considered to the extent that the activity “necessarily has a significant influence” on the party's ability to function as a parent). Consequently, the trial court's finding was not against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

6. HOME, SCHOOL, AND COMMUNITY

Janette Conner next argues that the trial court again erred as a matter of law by failing to make a sufficiently specific finding as to whether the children's “home, school, and community record” favored either party. She also argues that the trial court erred in considering this factor because it did not consider whether a change in custody would detrimentally affect the children by forcing them to change schools.

Unlike the case relied upon by Janette on appeal, the trial court here did not merely mention this factor in its opinion and order. Cf. *Wolfe v Howatt*, 119 Mich App 109, 111; 326 NW2d 442 (1982). Rather, it plainly discussed the evidence that showed that PC was generally a good student and that KC had had difficulties. It also referred to the evidence that Janette Conner was uncooperative with school personnel, but that the school personnel had a positive experience with Keith Conner. While the trial court did not explicitly find that the children's school record favored Keith, it implicitly did so. This was sufficient to permit this Court to determine whether the evidence clearly preponderated against the finding. *MacIntyre v MacIntyre (On Remand)*, 267 Mich App 449, 452; 705 NW2d 144 (2005).

We also do not agree that the trial court erred by failing to consider the potential disruption to the children's academics that a change in custody might cause under this factor. The factor relates to the children's existing home, school, and community record. MCL 722.23(h). Accordingly, the trial court could properly limit its findings to the academic history addressed at the hearing.

7. FACILITATING PARENT-CHILD RELATIONSHIPS

Janette Conner argues that, as with several other factors, the trial court committed a clear legal error by failing to find whether the parties' "willingness and ability" to "facilitate and encourage a close and continuing parent-child relationship between the child and the other parent" favored either party. MCL 722.23(j). In reviewing this factor, the trial court identified the evidence that Janette Conner deliberately moved in order to limit her ex-husband's ability to parent as undisputed. It then discussed other evidence that Janette would not facilitate her ex-husband's relationship with his children and even preferred sending them to be with a sitter rather than spend extra time with him. It then contrasted that evidence with Keith Conner's testimony that Janette would work with him from time to time. Although the trial court did not state that this factor favored Keith Conner, it is evident that it treated this factor as favoring Keith Conner. Indeed, in its summary at the close of its opinion, the trial court referred to the parties' inability to communicate and Janette's "animosity", but elected to continue her joint legal custody because Keith Conner "has expressed a willingness to work" with her on parenting issues.

The evidence supported the trial court's discussion of this factor. Therefore, we cannot conclude that the trial court's finding was against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

8. DOMESTIC VIOLENCE

Finally, Janette Conner argues that the trial court gave undue weight to her involvement in a relationship that exposed the children to domestic violence. See MCL 722.23(k). Specifically, she notes that Keith Conner refused to return the children to her care until she separated from her boyfriend and seemed satisfied with the resolution of the problem after she obtained an apartment. We do not agree that the trial court gave Janette Conner's prior history undue weight. The trial court plainly considered this evidence against Janette because it showed that she would not give up the abusive relationship until her minor daughter and ex-husband insisted, which was a proper consideration under MCL 722.23(k).

III. CONCLUSION

The trial court did not commit a clear legal error or make findings that were against the great weight of the evidence. Because there were no errors warranting relief, we must affirm the trial court's opinion and order. *Fletcher*, 447 Mich at 877-881. Given our resolution, we need not address Janette Conner's argument that this matter should be remanded to a different judge.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh